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In re Application of :
William Geissler et al :
Application No. 10/708,360 : **DECISION ON PETITION**
Filed: February 26, 2004 :
Attorney Docket No. 022956-0257 :

This is a decision on the petition filed February 25, 2008, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

Although, the petition was filed under 37 CFR 1.137(b) for revival of an application for patent abandoned unintentionally, the petition is styled as one filed under 37 CFR 1.181 for withdrawal of the holding of abandonment since no statement of unintentional abandonment or fee for a petition under 1.137(b) was provided. Further, petitioner appears to argue that the application abandonment was held in error.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to timely provide corrected drawings on or before January 1, 2008, as required by the Notice of Allowability mailed October 1, 2007.

The Notice of Allowability mailed October 1, 2007 indicated that corrected drawings were required. Petitioner states that corrected drawings were filed on July 10, 2006. The corrected drawings filed July 10, 2006 were filed before the notice of Allowability and could not possibly be a response to the notice of Allowability which was mailed over a year later.

Accordingly, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$ petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
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By hand: U. S. Patent and Trademark Office
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 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By facsimile: **(571) 273-8300**
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.



Carl Friedman
Petitions Examiner
Office of Petitions